

Attorney Docket: 01378
U.S. Application No. 10/017,630 Examiner OUELLETTE, Art Unit 3629
RCE in Response to April 3, 2007 Final Office Action

REMARKS

In response to the final office Action dated April 3, 2007, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and the following remarks. The Assignee respectfully submits that the pending claims distinguish over the cited documents.

Claims 21-53 are pending in this application. Claims 1-20 were previously canceled.

Telephone Interview

Examiner Ouellette is thanked for the telephone interview of Thursday, January 24, 2008. Examiner Ouellette and Scott Zimmerman mostly discussed amended claim 53. Examiner Ouellette suggested that each independent claim be amended to recite "*predicting volume and channel changes*." Examiner Ouellette could not commit to an allowance, though, for he explained that "business method" patents are very difficult to search.

Rejection of Claims Under 35 U.S.C. § 102 (e)

Claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53 were rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,463,585 to Hendricks *et al.*

Hendricks, however, cannot anticipate these claims. These claims recite, or incorporate, many features that are not disclosed or suggested by *Hendricks*. Independent claims 21 and 27, for example, recite "*determining a point in time of interest*" and "*receiving content information from a content database, the content information describing a content offering at the point in time of interest*" (emphasis added). Support for such features may be found at least in the as-filed application at paragraphs [0027] and [0036]. Independent claims 21 and 27 also recite "*receiving subscriber actions for the point in time of interest, the subscriber actions comprising information related to buttons pushed by a subscriber at a remote control while viewing content*"

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(emphasis added). Support for such features may be found at least in the as-filed application at paragraphs [0035] and [0036]. Independent claims 21 and 27 also recite “predicting volume and channel changes” (emphasis added). Support for such features may be found at least in the as-filed application at paragraphs [0022] and [0036]. Support may also be found at least in U.S. Application 09/496,825 to Grauch, *et al.* at column 6, lines 23-25 and throughout columns 7 and 8. Paragraph [0002] of the as-filed application incorporates *Grauch* by reference.

Hendricks cannot anticipate independent claims 21, 27, 32, and 53. *Hendricks* is entirely silent to any prediction of future subscriber actions. As the Assignee has explained, *Hendricks* admittedly gathers click stream information to predict what content on a channel will most satisfy a viewer. Examiner Ouellette has previously argued that this prediction is equivalent to “predicting volume and channel changes.” See, e.g., Examiner Ouellette, Final Office Action mailed April 3, 2007, at page 3, lines 5-8. If the Office must interpret *Hendricks* to make some prediction, the only reasonable interpretation is that *Hendricks* predicts what “feeder channel” will most satisfy a viewer.

The Assignee, then, very respectfully, disagrees with Examiner Ouellette. The Assignee has even appealed Examiner Ouellette’s final rejection to the BPAI, but, because of the two-year backlog in the Board’s case load, the Assignee has decided to reopen prosecution to try and move this case forward. The Assignee, then, has elected to offer the above claim amendments in the hopes of overcoming Examiner Ouellette’s rejections. The Assignee submits that *Hendricks* uncontrovertibly does not teach or suggest “predicting volume and channel changes,” as independent claims 21, 27, 32, and 53 recite. Some dependent claim have also been amended to further describe these predicted subscriber actions, and support for these amendments may also be found in U.S. Application 09/496,825 to Grauch, *et al.* at columns 7 and 8. As the Assignee has already stated on the record, *Hendricks* uses click stream information to predict what content will most satisfy the viewer. Using click stream data to predict content is not equivalent to “predicting volume and channel changes.”

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Hendricks, then, does not anticipate claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53. *Hendricks* cannot be reasonably interpreted to predict "volume and channel changes," as independent claims 21, 27, 32, and 53 recite. The dependent claims incorporate these features and recite additional features. *Hendricks* cannot anticipate these claims, so the Office is respectfully requested to remove the § 102 (e) rejection of claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53.

Rejection of Claims Under 35 U.S.C. § 103 (a)

Claims 26, 31, 37, 45-47, and 49 were rejected under 35 U.S.C. § 103 (a) as being obvious over *Hendricks* in view of U.S. Patent 6,202,210 to Ludtke *et al.* These claims are all dependent upon their respective base claim and, thus, incorporate the same distinguishing features. As the Assignee explained above, *Hendricks* is silent to "predicting volume and channel changes," as independent claims 21, 27, and/or 32 recite. *Ludtke* does not cure these deficiencies. The Office alleges that *Ludtke* teaches monitoring of viewer histories from alternate sources. Whether or not the Office's assertion is true, the proposed combination of *Hendricks* and *Ludtke* still fails to teach or suggest all the features of independent claims 21, 27, and 32. One of ordinary skill in the art, then, would not find it obvious to modify the teachings of *Hendricks* and *Ludtke* to obviate claims 26, 31, 37, 45-47, and 49. Because the proposed combination of *Hendricks* and *Ludtke* does not teach or suggest all the claimed features, the § 103 (a) rejection of these claims must be removed.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or scott@scottzimmerman.com.

Respectfully submitted,

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JAN 28 2008



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